

Re-adopt He-M 1002.01, effective 9/26/10 (Document # 9795), to read as follows:

PART He-M 1002 CERTIFICATION STANDARDS FOR BEHAVIORAL HEALTH COMMUNITY RESIDENCES

Statutory Authority: New Hampshire RSA 126-A:19-20; 135-C:61, XII

He-M 1002.01 Purpose. The purpose of these rules is to:

- (a) Define the standards and procedures for the certification of community residences funded by the state of New Hampshire for persons with a mental illness; and
- (b) Establish minimum standards governing the operation and continued certification of such residences.

Re-adopt with amendment He-M 1002.02-1002.08, effective 9/26/10 (Document # 9795), to read as follows:

He-M 1002.02 Definitions.

- (a) “Agency residence” means a residence providing services as outlined in He-M 1002.05 and operated by staff of a community mental health program (CMHP).
- (b) “Bureau” means the bureau of behavioral health.
- (c) “Bureau administrator” means the chief administrator for the bureau of behavioral health.
- (d) “Case manager” means a person who is employed by a community mental health program or by a community mental health provider authorized pursuant to He-M 426.04 and who provides services in accordance with He-M 426.15.
- (e) “Certificate holder” means the person or agency in whose name a community residence’s certification is issued.
- (f) “Certification” means the written approval by the department for the operation of a community residence in accordance with He-M 1002.
- (g) “Commissioner” means the commissioner of the department of health and human services or his or her designee.
- (h) “Community mental health program (CMHP)” means a Medicaid provider that has been approved by the bureau administrator pursuant to He-M 403 and which plans, provides, contracts for, and monitors mental health services to the residents of a designated mental health service region.
- (i) “Community residence” means either an agency residence or family residence, exclusive of any independent living arrangement, that:
 - (1) Provides residential services in accordance with He-M 426 for at least one consumer with a mental illness;

(2) Provides services based on the needs identified in a consumer's individual service plan (ISP);

(3) Is operated directly by a community mental health program, or by contract or agreement between a CMHP and another entity;

(4) Is a community mental health provider;

(5) Serves consumers whose services are funded by the department; and

(6) Is certified pursuant to He-M 1002.

(j) "Consumer" means any person eligible pursuant to RSA 135-C:13 and He-M 401 to receive state-funded services in the state mental health services system and whose place of residence is a community residence under these rules.

(k) "Denial of certification" means a refusal to grant an initial certification or refusal to grant a renewal certification.

(l) "Department" means the New Hampshire department of health and human services.

(m) "Emergency" means an unexpected occurrence or set of circumstances in a consumer's life which consists of, culminates in, or has resulted from serious physical or psychological injury or both and requires immediate remedial attention.

(n) "Family residence" means a community residence operated:

(1) By a person or family residing therein; and

(2) Under contract with a CMHP or provider agency.

(o) "Independent living arrangement" means a situation where a consumer does not receive supervision 24 hours a day, 7 days a week but receives services in his or her home, as needed, to maintain or develop skills to live independently and prevent circumstances that could necessitate more intrusive and costly intervention.

(p) "Individual service plan" (ISP) means a written document prepared pursuant to He-M 401.12 and He-M 408.08.

(q) "License" means the written approval from the department of health and human services issued in accordance with either RSA 151 or RSA 170-E.

(r) "Licensed practitioner" means a medical doctor, physician's assistant, advanced practice registered nurse, doctor of osteopathy, or doctor of naturopathic medicine.

(s) "Mental illness" means a substantial impairment of emotional processes, or of the ability to exercise conscious control of one's actions, or of the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions. It does not include impairment primarily caused by:

(1) Epilepsy;

(2) Intellectual disability;

(3) Continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs; or

(4) Dependence upon or addiction to any substance such as alcohol or drugs.

(t) “Nurse-trainer” means a registered nurse who has been designated as a trainer.

(u) “Plan of correction” means a written representation of a revised policy or practice that reflects how a community residence will come into compliance with a violation He-M 1002 as found by the department.

(v) “Provider” means a person who volunteers or is employed by, has a contract with, or receives any form of remuneration from a CMHP, provider agency, or individual to deliver residential services to a consumer.

(w) “Provider agency” means a CMHP or an entity under contract with a CMHP that is responsible for the operation or supervision of an agency residence or family residence.

(x) “Region” means a geographic area defined and designated in He-M 425 by the bureau administrator for the purpose of assigning primary responsibility for providing mental health services to the residents of certain communities.

(y) “Residence administrator” means a person designated by a provider agency who has the authority to oversee the operation of a community residence.

(z) “Residential service plan” means the document that describes the residential goals and objectives identified in a consumer’s ISP and specifies ways in which the community residence will implement those goals and objectives pursuant to He-M 408.08(i).

(aa) “Staff” means an employee of a CMHP, provider agency, or individual who provides direct services to a consumer.

(ab) “Supervision” means that staff will maximize consumers’ safety and assist consumers in achieving the goals identified in their individual service plans.

(ac) “Team” means a case manager, consumer, guardian if applicable, and others invited by the consumer to participate in the service planning and review meetings.

He-M 1002.03 Administrative Requirements.

(a) A community residence shall be located in areas where other family housing is located.

(b) A community residence shall not erect any sign that labels the consumers or functions of the residence.

(c) A community residence shall have providers on site whenever there are consumers present in the residence.

(d) A community residence shall have no more than 8 persons receiving paid services in the residence.

(e) Any community residence serving 4 or more consumers shall be licensed in accordance with RSA 151 and He-P 800.

(f) A community residence intending to provide or providing services to any 2 persons not receiving services through a CMHP shall be licensed in accordance with RSA 151 and He-P 800.

(g) A community residence shall serve persons who are 18 years of age or older.

(h) A community residence that is not owned and operated by a CMHP shall have a written service agreement with the regional CMHP.

(i) A written service agreement required by (h) above shall specify, at a minimum, that:

(1) Any placement of a person into a community residence shall be approved by the CMHP and follow the provisions of He-M 401;

(2) The resident or his or her designee shall participate with the case manager in the development of a residential service plan pursuant to He-M 1002.05; and

(3) The residence administrator shall ensure implementation of the plan as written.

(j) Prior to hiring or contracting with a person to work in a community residence, the provider agency shall, after obtaining signed and notarized authorization from the person or persons for whom information is being sought:

(1) Obtain at least 2 references for the person;

(2) Submit the person's name for review against the registry of founded abuse, neglect, and exploitation to ensure that the person is not on the registry pursuant to RSA 169:35 or RSA 161-F:49;

(3) Complete a criminal records check to ensure that the person and all adult household members who reside in the residence, 17 years of age or older, excluding consumers, have no history of:

a. Felony conviction; or

b. Any misdemeanor conviction involving:

1. Physical or sexual assault;

2. Violence;

3. Exploitation;

4. Child pornography;

5. Threatening or reckless conduct;

6. Theft;

7. Driving under the influence of drugs or alcohol; or

8. Any other conduct that represents evidence of behavior that could endanger the well-being of a consumer; and

(4) Complete a motor vehicles record check to ensure that the potential provider has a valid driver's license, if such provider will be transporting consumers.

(k) A family residence shall have a written agreement with the provider agency that requires, at a minimum, that a list of the names of all persons living in the residence be disclosed to the provider agency.

(l) A family residence shall notify the provider agency of any change(s) in the list required in (k) within 30 days.

(m) If a provider is not selected by the consumer to participate in the service-planning meeting, the case manager shall contact the provider prior to the meeting so that his or her input can be considered.

(n) The provider shall ensure implementation of the provisions of the residential service plan and the individual service agreement as written.

(o) No provider or other person living or working in a community residence shall serve as the legal guardian of a consumer living in that community residence.

(p) Community residences shall have personal injury liability insurance for the residence and for vehicles used to transport consumers.

(q) Community residences shall maintain certificates of insurance obtained pursuant to (p) above, on file at the premises.

(r) A community residence shall be constructed and maintained in accordance with local health and building codes.

(s) Living space shall be arranged and maintained as to provide for the health and safety of all household members, as follows:

(1) Each community residence shall be maintained in good repair and free of hazard to household members; and

(2) Each community residence shall be free from environmental nuisances, including loud noise and foul odors.

(t) A community residence shall provide the following:

(1) A specific sleeping area designated for each consumer;

(2) A separate bed for each consumer with each bedroom containing no more than 2 beds; and

(3) Storage space for each consumer's clothing and other personal possessions.

(u) A community residence shall protect a consumer's right to privacy to the maximum extent possible while continuing to monitor the health and safety of each consumer.

(v) Each bedroom shall be situated such that:

(1) No person resides in a bedroom that is the access way to another's bedroom or to a common area of the house; and

(2) Common areas shall not be used as bedrooms by any person living in the home.

(w) The community residence shall have:

(1) At least one indoor bathroom which includes a sink, toilet, and a bathtub or shower for every 6 persons in the household;

(2) At least one telephone for incoming and outgoing calls;

(3) A functioning septic or other sewage disposal system; and

(4) A source of portable water for drinking and food preparation, as follows:

a. If drinking water is supplied by a non-public water system, the water shall be tested and found to be in accordance with Env-Dw 704- 706 initially and every 5 years thereafter; and

b. If the water is not approved for drinking, an alternative method for providing safe drinking water shall be implemented.

He-M 1002.04 Qualifications for Service Provision.

(a) All providers shall be at least 18 years of age.

(b) Prior to providing services to a consumer, a prospective provider shall have evidence of a negative mantoux tuberculin test, or, if positive, evidence of follow-up conducted in accordance with the 2005 Center for Disease Control Guidelines. Such test shall have been completed within the previous 6 months.

(c) All providers of residential services shall:

(1) Receive training in clients rights, as defined in He-M 309 and client rights procedures as defined in He-M 204;

(2) Meet the requirements for individualized resiliency and recovery oriented services (IROS) contained in He-M 426.12; and

(3) Be able to implement the community residence's evacuation procedures.

He-M 1002.05 Person-Centered Services.

(a) A community residence shall provide services to meet the residential objectives of the consumer's ISP as outlined in the residential service plan.

(b) A community residence shall offer services that include assistance and instruction to improve and maintain a consumer's skills in basic daily living, personal development, and community activities such as, but not limited to:

- (1) Personal decision making;
- (2) Personal care, household management, budgeting, shopping, and other functional skills;
- (3) Household chores and responsibilities;
- (4) Having relationships with persons both with and without disabilities;
- (5) Accessing a wide range of integrated community activities including recreational, cultural, and other opportunities;
- (6) Participating in religious services and practices of the consumer's choosing; and
- (7) Choosing and wearing clothing that is neat, clean, in good repair, and appropriate to the season and activity.

(c) A community residence shall request residents to sign out when leaving the residence for a period expected to be longer than one hour.

(d) The number of providers working in a community residence shall be sufficient to:

- (1) Meet the needs of the consumers living therein, as identified in each consumer's ISP; and
- (2) Provide the services required in this section.

He-M 1002.06 Health and Safety.

(a) Each consumer shall have an annual health assessment by a physician or other licensed practitioner for the purpose of evaluating health status and making recommendations regarding strategies for promoting and maintaining optimal health.

(b) A community residence shall adopt protocols that:

- (1) Explain to residential staff how medical situations are expected to be handled; and
- (2) Assist residential staff in the identification of unusual medical situations.

(c) A community residence shall orient all staff to procedures identified in (b) above upon hiring and annually thereafter.

(d) The residence administrator shall, in conjunction with the case manager, have arrangements to access medical services at all times, including emergency services.

(e) The community residence shall have a written policy that specifies the procedures to be followed in the event of a medical and psychiatric emergencies.

(f) In the event of an emergency concerning a consumer including hospitalization, serious illness, serious bodily harm or injury, or imminent death or death, the residence administrator or case manager shall, within 24 hours, notify the consumer's:

- (1) Guardian, if applicable;
- (2) Next of kin; and
- (3) Significant others.

(g) A residence administrator shall annually review and update, as necessary, the names, addresses, and phone numbers of the people notified pursuant to (f) above.

(h) With regard to religious matters, the wishes of the consumer or guardian, if applicable, shall be respected and followed in the event of an emergency as identified in (f) above.

(i) In the event of the death of a consumer:

- (1) The provider agency shall immediately notify the CMHP; and
- (2) The CMHP shall notify the bureau within 12 hours of the death.

(j) Providers having personal knowledge of an emergency shall verify that a consumer's case manager and next of kin, guardian, or significant other have been notified within 24 hours.

(k) The provider agency shall document the information in (f) above, and retain a copy with the case manager at the CMHP and at the community residence.

(l) In any case of known or suspected neglect, abuse or exploitation, the provider aware of the situation shall follow procedures as outlined in He-M 309, rights of persons receiving mental health services in the community, and any other applicable rules relative to client rights protection procedures.

(m) In addition to the requirements of (l) above, the provider shall report the situation to the division of children, youth and families in accordance with RSA 169-C:29 or the bureau of elderly and adult services as required by RSA 161-F:42-57, as applicable.

(n) Medication administration for consumers shall be conducted in accordance with He-M 1202.

(o) A provider shall have the following responsibilities with respect to a consumer's food and fluids:

- (1) The consumer's preferences and requirements shall be taken into account;
- (2) Varied and nutritionally balanced meals, including adequate fluids, shall be provided in the morning, at midday, and in the evening, unless other arrangements for meals have been made;

- (3) Access to food shall not be restricted unless a licensed practitioner deems it necessary for the health of the consumer and the legal guardian consents to the restriction;
 - (4) Special diets, dietary supplements, and dietary modifications shall be according to a licensed practitioner's orders and the consumer's religious practices;
 - (5) If a consumer requires specific methods or techniques for maintaining adequate nutrition and or hydration, as determined by a licensed practitioner, such methods or techniques shall be implemented and documented in the consumer's clinical record; and
 - (6) No attempt to feed or hydrate a consumer against his or her shall be made unless medically prescribed by a licensed practitioner and approved by the legal guardian.
- (p) Providers shall label toxic substances as to contents and antidote and safely store such substances away from food preparation and food storage areas.
- (q) Prior to providing services, a community residence shall develop an emergency evacuation plan that indicates the location of all evacuation routes and exits and provides for the safe evacuation of all persons within 3 minutes.
- (r) The provider shall orient each consumer newly admitted to a community residence to the evacuation procedures.
- (s) Within 5 days of a consumer moving into a community residence, the provider shall:
- (1) Conduct a fire evacuation drill to assess the individual's ability to evacuate the residence in less than 3 minutes; and
 - (2) Based on the drill, complete and document a fire safety assessment that includes the following individual risk factors:
 - a. Response to alarm;
 - b. Response to instruction;
 - c. Vision and hearing difficulties;
 - d. Impaired judgement;
 - e. Mobility problems; and
 - f. Resistance to evacuation.
- (t) The fire safety assessment shall indicate:
- (1) The staff or provider to individual ratio during both sleep and non-sleep hours;
 - (2) The name and phone number of agency back-up in the event of an emergency; and
 - (3) The date completed and signature of the person documenting the individual's risk factors.

(u) For each consumer unable to evacuate his or her residence within 3 minutes, a fire safety plan shall be developed and approved by the consumer or guardian, provider, and residential administrator that identifies:

- (1) The cause(s) for such inability;
- (2) The specific assistance needed by the consumer to be furnished by the provider; and
- (3) A training approach to reduce the evacuation time to 3 minutes or less.

(v) Evacuation drills shall:

- (1) Be held at varied times of the day;
- (2) Involve all persons in the home at the time of the drill;
- (3) For community residences of 4 or more individuals, comply with He-P 814.23(k); and
- (4) For community residences of 3 or fewer individuals, include transmission of the alarm signal unless doing so would register as a false alarm to the fire department or alarm company.

(w) A written record of each evacuation drill shall:

- (1) Be kept on file at each community residence; and
- (2) Indicate:
 - a. The names of all consumers and other persons involved;
 - b. The date of the drill;
 - c. The time of day;
 - d. The time taken to evacuate; and
 - e. The exits utilized.

(x) If a community residence for 3 or fewer consumers has been evacuated in 3 minutes or less during each of 6 consecutive monthly drills, one of which has been a sleep-time drill, the residence shall thereafter conduct a drill at least once quarterly, with one drill per year to be during sleep hours.

(y) If a community residence serves 4 or more consumers, the residence shall conduct monthly drills, with at least 3 drills per year to be held during sleep hours.

(z) A community residence that has a complete sprinkler system and fire alarm system that immediately notifies the local fire department shall be exempt from the requirement to complete a fire

drill in less than 3 minutes if documentation is provided that such systems are in compliance with local fire codes.

(aa) If a new consumer moves into a community residence for 3 or fewer consumers, the community residence shall:

- (1) Conduct monthly drills until all consumers have evacuated the residence in 3 minutes or less for 4 consecutive monthly drills; and
- (2) Thereafter conduct a drill at least once quarterly, with one drill per year to be during sleep hours.

(ab) For any consumer living in a community residence receiving less than 24-hour supervision, a personal safety assessment pursuant to (ad) below shall be completed..

(ac) The personal safety assessment shall be approved initially or upon change in residence and be revised whenever necessary.

(ad) The personal safety assessment shall identify a consumer's knowledge of and ability to respond to each of the following:

- (1) Fire;
- (2) Medical emergency;
- (3) Unsafe conditions in the home and community;
- (4) Abuse and exploitation;
- (5) Being lost in one's community;
- (6) Severe weather and other natural disasters; and
- (7) Building maintenance problems, such as power outages.

(ae) If the personal safety assessment determines that the consumer does not require a personal safety plan the consumer or legal guardian shall provide written approval of his or her agreement with the assessment.

(af) If the personal safety assessment determines that the consumer needs assistance to respond appropriately to situations outlined in (ad) above,

- (1) A personal safety plan shall be developed by the consumer and other members of the consumer's team; and
- (2) The consumer shall receive 24 hour supervision until the personal safety plan is implemented.

(ag) A personal safety plan shall:

- (1) Identify the supports necessary for a consumer to respond to each of the contingencies listed in (ad) above;
 - (2) Indicate who will provide the needed supports;
 - (3) Describe how the supports will be activated in an emergency;
 - (4) Indicate written approval of the consumer or legal guardian, provider, residential coordinator, and case manager;
 - (5) Be reviewed by the provider at the time of the consumer's ISP; and
 - (6) Be revised whenever there is a change in the consumer's residence or ability to respond to the contingencies listed in the plan.
- (ah) The community residence shall obtain the written approval in (ag)(4) above prior to the implementation of the personal safety plan and the consumer receiving unsupervised time.

He-M 1002.07 Consumer Residential Records.

- (a) Separate records for each consumer shall be maintained by the residence administrator at the residence.
- (b) Each individual's residential record shall include:
- (1) The names, addresses and telephone numbers of persons to be notified in an emergency;
 - (2) The consumer's current ISP;
 - (3) The consumer's fire safety assessment and, if applicable, fire safety plan;
 - (4) The consumer's personal safety assessment and, if applicable, personal safety plan; and
 - (5) Medical information including:
 - a. The names, addresses and telephone numbers of the consumer's physician, dentist, therapists and any other licensed practitioners;
 - b. Medical orders;
 - c. Medical history;
 - d. A copy of the nurse-trainer assessment and approval for medication self-administration required by He-M 1202.07, if applicable;
 - e. A copy of the annual health assessment of the consumer pursuant to He-M 1002.06 (a);
 - f. Known allergies, if any;
 - g. Other pertinent medical information; and

h. A medication log completed at the residence pursuant to He-M 1202.08 for all current medications.

(c) The residence administrator or other providers shall complete attendance records and keep them on file at the community residence.

(d) Outdated information may be removed from the community residence record but shall be maintained in the individual's residential record and accessible by the CMHP for 7 years.

He-M 1002.08 Quality Assurance.

(a) A CMHP shall monitor its community residences and conduct periodic quality assurance visits to each community residence to ensure that services are provided pursuant to He-M 1002.

(b) CMHPs shall conduct announced or unannounced quality assurance visits at least annually, but may be at a greater frequency as determined by the CMHP.

(c) The department shall conduct announced or unannounced quality assurance visits to community residences.

(d) Each CMHP shall review certification deficiencies pursuant to He-M 1002.13 to identify necessary corrective action and maintain compliance.

(e) Each CMHP shall comply with the department's quality assurance procedures in accordance with RSA 126-A:4, IV and these rules.

Readopt with amendments He-M 1002.09-1002.18, effective 9-26-10 (Document # 9795) and renumber 1002.09 as 1002.12 and He-M 1002.10-1002.18 as He-M 1002.09 -1002.18, to read as follow:

He-M 1002.09 Initial Certification Process.

(a) An applicant for initial certification as a community residence shall apply via an application form obtained from the Health Facilities Administration (HFA) entitled "Request for Certification of Community Residence and/or Individual Day Provider" incorporated by reference in He-M 1002.19.

(b) All information entered on the forms described in (a) above shall be typewritten or otherwise legibly written.

(c) An applicant shall request initial certification for any of the following reasons:

(1) Certification of a new community residence; or

(2) For an existing community residence:

a. A change in the provider agency;

b. A change in physical location; or

c. An increase in the number of certified beds.

(d) If the signer of the application knew or should have known that the community residence was not in compliance with applicable statutes and rules at the time of signing, the department shall deny or revoke certification pursuant to He-M 1002.14(a)(10) or He-M 1002.15(a)(6).

(e) The signed and dated approval from the local fire official shall:

- (1) Be obtained no more than 90 days prior to the submission of the application for certification;
- (2) Verify the street address of the proposed or existing community residence;
- (3) Verify that the home complies with all state and local fire codes;
- (4) Include the date of the life safety inspection; and
- (5) Specify the maximum number of beds that can safely be occupied by consumers living in the proposed or existing community residence.

(f) A temporary certification shall be granted for 90 days from the date that the department's office of operations support receives all information required by (a) above.

(g) A certification review shall be conducted by the office of operations support within 90 days of the date of receipt of all information required in (a) above for the purposes of determining whether or not the community residence is in compliance with He-M 1002.

(h) If the community residence is not in compliance with He-M 1002 at the certification review required by (g) above, the community residence shall submit a plan of correction in accordance with applicable sections of He-M 1002.13.

(i) If, as a result of a certification review, the community residence is found to be in compliance with He-M 1002, certification shall be granted beyond the initial 90-day period as specified in He-M 1002.12 (e)(3)a..

(j) An application for certification shall be denied based upon criteria listed in He-M 1002.14.

He-M 1002.10 Renewal Certification Process.

(a) A community residence seeking to renew certification shall apply via an application form obtained from the HFA entitled "Request for Certification of Community Residence and/or Individual Day Provider" incorporated by reference in He-M 1002.19.

(b) Community residences applying for renewal certification shall submit the completed application in (a) above 60 days prior to the expiration of the certificate.

(c) All information entered on the forms described in (a) shall be typewritten or otherwise legibly written.

(d) The community residence shall submit with the following:

- (1) A copy of any request for renewal of an existing waiver previously granted by the department, in accordance with He-M 1002.18, if applicable;
 - (2) A statement identifying any exception or variance applied for or granted by the state fire marshal in accordance with Saf-C 6005.04; and
 - (3) A new, signed approval from the local fire official if renovations were completed since the last submission of a life safety code inspection that:
 - a. Required a building permit pursuant to local building codes; or
 - b. Have altered any means of egress.
- (e) A community residence's request for certification renewal shall be approved if:
- (1) The information required by (a) above is received by the department prior to the expiration of the current certificate; and
 - (2) The community residence is found to be in compliance with He-M 1002 as a result of an inspection performed pursuant to He-M 1002.13 (a).
- (f) An inspection shall not be conducted, if, a community residence with fewer than 4 beds:
- (1) Has no deficiencies cited, at its previous annual inspection; and
 - (2) The provider agency has submitted, 60 days prior to the expiration of the current certificate, the following:
 - a. A completed and signed application for certification;
 - b. Written indication, signed by the provider agency's executive director, that the provider agency has monitored and will continue to monitor the residence and that the residence remains in full compliance with all applicable rules; and
 - c. A verification that those administering medications in the residence are currently authorized by the agency nurse-trainer.
- (g) A community residence that submits all of the required information pursuant to (d) above shall be recertified for a period of one year from the expiration of its current certification.
- (h) A certification issued pursuant to (e) above shall be granted once in any 2-year period.
- (i) If a community residence has been approved in accordance with (f) above, the certificate shall indicate: "renewed without inspection."
- (j) The office of operations support shall conduct an inspection in accordance with He-M 1002.09 (f) prior to recertification of:
- (1) A community residence that holds a license pursuant to RSA 151;

(2) A community residence that has increased the number of people receiving residential services since its last inspection; and

(3) A community residence that does not have an annual certificate.

(k) If, at the time the annual inspection is due, a community residence does not have any consumers living in the residence, it may:

(1) Submit a letter notifying the office of operations support of its intent to close; or

(2) Submit a written request to the office of operations support for certification renewal without an annual inspection.

(l) The written request shall contain the following:

(1) The name of the residence;

(2) The certificate number;

(3) The location of the residence; and

(4) The expiration date of the certificate.

(m) The department shall approve a community residence that meets the requirements in (i) and (j) above, and issues a certificate that states: “renewed without consumers.”

(n) If a community residence has been certified as “renewed without consumers”, the provider agency shall notify the office of operations support, in writing, within 7 days of a consumer moving into the residence.

(o) An on-site inspection shall be conducted within 90 days of receipt of any notification in (g) above.

He-M 1002.11 Emergency Certification Process.

(a) A proposed or existing community residence may request an emergency certificate from the department, if the following applies:

(1) The community residence accepts a new consumer on an emergency basis, and the resulting number of consumers living in the community residence exceeds the number of certified beds allowed pursuant to He-M 1002; or

(2) The residence does not hold a currently valid certificate.

(b) A proposed or existing community residence shall apply via the application form entitled “Emergency Certification for Community Residence- 3 for Fewer Beds,” incorporated by reference in He-M 1001.19, within 7 days of the consumer moving into the residence.

(c) The executive director of the responsible CMHP shall provide a statement signed and dated that verifies that appropriate staff have determined that the home meets the requirements of He-M 1002 and He-M 1202.

(d) The department shall deny a request for emergency certification if the provider agency does not meet the requirements in (a) through (c) above.

(e) The start date of the emergency certification shall not be more than 7 days from the receipt of the emergency application by the department.

(f) Emergency certification shall be issued for 45 days from the start date upon receipt by the office of operations support of a completed and signed application pursuant to (b) and (c) above.

(g) An emergency certification issued pursuant to (f) above shall be extended for an additional 45 days for a community residence that:

(1) Submits to the office of operations support evidence that, within 14 days of emergency certification, the provider agency has made written request to the local fire inspector for a life safety inspection and report; and

(2) Files a written request for the extension with the office of operations support prior to the expiration of the emergency certificate.

(h) Only one request for an extension to an emergency certificate shall be granted.

(i) A community residence operating under an emergency certification that seeks to continue operation shall apply for certification in accordance with He-M 1002.09.

He-M 1002.12 Certification.

(a) To be eligible for reimbursement by the department, a community residence shall be certified in accordance with He-M 1002.

(b) All certificates shall be non-transferable from one provider agency to another or from one physical location to another.

(c) A certificate issued to an applicant shall indicate:

(1) The effective date of the certificate;

(2) The expiration date of the certificate;

(3) The certificate number;

(4) The type of certificate, which shall be listed as:

a. Emergency;

b. Temporary; or

c. Annual, which shall encompass both initial and renewal certifications;

(5) The maximum number of certified beds allowed, including respite beds, as determined by:

- a. Local fire approval, as required by He-M 1002.09 (d)(18); and
- b. The applicable provisions of He-M 1002.03 (d),(e), (f), (g), and (i);

(6) The name of the provider agency;

(7) The name of the CMHP; and

(8) Information regarding any waivers issued in accordance with He-M 1002.18.

(d) If a certified community residence wishes to provide services to consumers served by a provider agency that is not the provider agency identified on the certificate, the community residence shall obtain written approval from the provider agency identified on the certificate.

(e) Certifications shall be valid as indicated by the type:

(1) Emergency certificates shall be valid for 45 days;

(2) Temporary certificates shall be valid for 90 days; and

(3) Annual certificates, including the following:

a. Certificates shall be valid from the effective date of the temporary certificate until the last day of the twelfth month following temporary certification; and

b. Renewal certificates shall be issued for one year from the expiration date of the previous certificate.

(f) Upon written request, the department shall issue a revised certificate when the local, state or federal government modifies the street address of a community residence without any change in the physical location of the community residence operations.

(g) The request submitted in accordance with (f) above shall contain the following:

(1) The name and address of the community residence as it appears on the current certificate;

(2) The name and address of the community residence as it will appear on the new certificate; and

(3) A copy of the notification of the required change in street address.

(h) When a certificate is revised in accordance with (f) above, the certificate number and expiration date shall not change.

(i) Any community residence that no longer intends to provide services to consumers shall notify the department in writing of the following information:

(1) The name of the community residence;

(2) The certificate number of the community residence;

- (3) The address of the community residence;
- (4) The date the community residence closed or will close; and
- (5) The location that the consumer(s) has moved to, including the name of the home and certificate number of the home, if available.

He-M 1002.13 Inspections and Plans of Correction.

(a) The department shall conduct inspections to determine compliance with all applicable rules prior to:

- (1) Issuing an initial certification; and
- (2) Renewal of a certificate except as allowed by He-M 1002.10 (f) or (h).

(b) Following an inspection and determination pursuant to (a) above, the department shall issue a written inspection report that includes:

- (1) The name and address of the physical location of the community residence;
- (2) The name of the responsible CMHP;
- (3) The date of the inspection;
- (4) A listing of all rules with which the community residence failed to comply;
- (5) Evidence supporting the finding of non-compliance with each identified rule; and
- (6) The name of the person(s) conducting the inspection.

(c) If deficiencies were cited in the inspection report, within 21 days of the date of issuance of the report, the community residence shall submit a written plan of correction or submit information as to why the deficiency(ies) did not exist.

(d) The department shall evaluate any submitted information on its merits and render a written decision on whether a written plan of correction is necessary.

(e) The plan of correction submitted in accordance with (c) above shall describe:

- (1) How the community residence corrected or intends to correct and prevent occurrence of each deficiency; and
- (2) The date by which each deficiency will be corrected.

(f) The department shall issue a certificate if it determines that the plan of correction:

- (1) Addresses the deficiency in a manner which achieves full compliance with rules cited in the inspection report;

- (2) Addresses all deficiencies cited in the inspection report;
 - (3) Does not create a new violation of statute or rule as a result of its implementation; and
 - (4) States a completion date.
- (g) The department shall reject a plan of correction that fails to comply with (f) above.
- (h) If the proposed plan of correction is rejected, the department shall notify the community residence in writing of the reason(s) for rejection.
- (i) Within 21 days of the date of the written notice under (h) above, the community residence shall submit a revised plan of correction that:
- (1) Includes proposed alternatives that address the reason(s) for rejection; and
 - (2) Is reviewed in accordance with (f) and (g) above.
- (j) If the revised plan of correction is rejected, the department shall deny the certification request.
- (k) The department shall verify that a plan of correction, as submitted and accepted, has been implemented by:
- (1) Reviewing materials submitted by the community residence;
 - (2) Conducting a follow-up inspection; or
 - (3) Reviewing compliance during the next certification inspection required by (a) above.

He-M 1002.14 Denial of Certification.

- (a) The department shall deny an application for certification following written notice and opportunity for a hearing pursuant to He-C 200, due to any of the following:
- (1) Any reported abuse, neglect or exploitation of a consumer by an applicant, residence administrator, provider, staff member, or person living in a community residence, if:
 - a. Such abuse, neglect or exploitation is reported on the state registry of abuse, neglect, and exploitation in accordance with RSA 161-F:49;
 - b. Such person(s) continues to have contact with the consumer;
 - c. Such finding has not been overturned on appeal, been annulled, or received a waiver pursuant to He-M 1002.18; or
 - d. There is a similar finding by an adult protection or child protection agency of any other state;
 - (2) Any applicant, provider, or person living in a community residence has been found guilty of fraud or a felony against a person in this or any other state by a court of law;

(3) Any applicant, provider, or person living in the community residence has a misdemeanor conviction that involves:

- a. Physical or sexual assault;
- b. Violence or exploitation;
- c. Child pornography;
- d. Threatening or reckless conduct;
- e. Theft; or
- f. Any other conduct that represents evidence of behavior that could endanger the well-being of a consumer;

(4) A provider agency or CMHP fails to perform criminal background checks on all persons who:

- a. Are paid to provide services under He-M 1002; and
- b. Begin to provide such services on or after the effective date of He-M 1002;

(5) An applicant, family member or provider has an illness or behavior that, as evidenced by the documentation obtained and the observations made by the department, would endanger the well-being of the consumers or impair the ability of the community residence to comply with department rules, except in cases where such personnel have been reassigned and the consumer's well-being and the community residence's ability to comply with these rules are no longer at risk;

(6) The applicant or any representative or employee of the applicant knowingly provides false or misleading information to the department;

(7) The applicant or any representative or employee of the applicant prevents or interferes with any inspection or investigation by the department;

(8) The applicant or any representative or employee of the applicant fails to provide required documents to the department;

(9) At an inspection the applicant or certificate holder is not in compliance with RSA 135-C or He-M 1002 or other applicable certification rules;

(10) The applicant has demonstrated a history of multiple, or repeat violations of RSA 135-C or its implementing administrative rules that pose or have posed a health or safety risk to clients;

(11) The applicant, provider, or any representative, or employee of the applicant has knowingly provided materially false or misleading information;

(12) The applicant has submitted a plan of correction that has been rejected by the department in accordance with He-M 1002.13;

(13) The applicant failed to fully implement and continue to comply with a plan of correction that has been accepted by the department in accordance with He-M 1002.13; or

(14) For community residences with 4 or more consumers, denial or revocation of licensure or denial of application for licensure has taken place.

(b) If the department determines that a community residence meets any of the criteria for denial listed in (a) above, the department shall deny the certification of the residence.

(c) Certification shall be denied upon the written notice by the department to the community residence stating the specific rule(s) with which the residence does not comply.

(d) Any applicant aggrieved by the denial of an application may request an adjudicative proceeding in accordance with He-M 1002.17.

(e) The denial shall become final when the period for requesting an adjudicative proceeding has expired or, if the applicant or provider requests an adjudicative proceeding, when the administrative appeals unit issues a decision upholding the department's action.

(f) A community residence shall not accept additional consumers if a notice of denial of certificate has been issued.

He-M-1002.15 Revocation of Certification.

(a) The department shall revoke certification of a community residence, following written notice and opportunity for a hearing pursuant to He-C 200, due to any of the following:

(1) Any reported abuse, neglect, or exploitation of an individual by a certificate hold, residence administrator, provider, staff member, or person living in a community residence, if:

a. Such abuse, neglect, or exploitation is reported on the state registry of abuse, neglect or exploitation in accordance with RSA 161-F:49;

b. Such person(s) continues to have contact with the individual; or

c. Such finding has not been overturned on appeal, been annulled, or received a waiver pursuant to He-M 1002.18;

(2) Any provider or person living in the community residence has been found guilty of fraud or a felony against a person in this or any other state by a court of a law;

(3) Any provider or person living in the community residence has a misdemeanor conviction that involves:

a. Physical or sexual assault;

b. Violence or exploitation;

- c. Child pornography;
 - d. Threatening or reckless conduct;
 - e. Driving under the influence of drugs or alcohol;
 - f. Theft; or
 - g. Any other conduct that represents evidence of behavior that could endanger the well-being of a consumer;
- (4) A provider agency or CMHP fails to perform criminal background checks on all persons who:
- a. Are paid to provide services under He-M 1002; and
 - b. Begin to provide such services on or after the effective date of He-M 1002;
- (5) The certificate holder, family member or provider has an illness or behavior that, as evidenced by the documentation obtained and the observations made by the department, would endanger the well-being of the consumers or impair the ability of the community residence to comply with department rules, except in cases where such personnel have been reassigned and the consumer's well-being and the community residence's ability to comply with these rules are no longer at risk;
- (6) The certificate holder or any representative or employee of the certificate holder knowingly provides materially false or misleading information to the department during an inspection;
- (7) The certificate holder or any representative or employee of the certificate holder fails to permit or interferes with any inspection or investigation conducted by the department;
- (8) The certificate holder or any representative or employee of the certificate holder fails to provide requested files or documents to the department;
- (9) An inspection finds the certificate holder to be out of compliance with RSA 135-C or any of the applicable certification rules;
- (10) The certificate holder has demonstrated a history of multiple, or repeat violations of RSA 135-C or other applicable licensing rules that pose or have posed a health or safety risk to clients;
- (11) The certificate holder has submitted a plan of correction that has been rejected by the department in accordance with He-M 1002.13;
- (12) The certificate holder has failed to fully implement or continue to comply with a plan of correction that has been accepted by the department in accordance with He-M 1002.13; or
- (13) For community residences for 4 or more consumers, denial or revocation of licensure or denial of application for licensure has taken place.

(b) The department shall issue written notice of revocation of certification stating the specific rule(s) with which the community residence does not comply.

(c) Any certificate holder aggrieved by the revocation of the community residence's certificate may request an adjudicative proceeding in accordance with He-M 1002.17.

(d) The revocation shall not become final until the period for requesting an adjudicative proceeding has expired or, if the certificate holder requests an adjudicative proceeding, until such time as the administrative appeals unit issues a decision upholding the department's action.

(e) A community residence shall not accept additional consumers if a notice of intent to revoke the certification of the community residence has been issued.

(f) If a certificate has been revoked, the certificate holder, in conjunction with the provider agency, shall transfer all consumers to another appropriately certified residence within 10 days of certificate revocation becoming final in accordance with (e) above.

He-M 1002.16 Immediate Suspension of Certification. Notwithstanding the provisions of He-M 1002.15 (b), if the department orders immediate suspension of a certificate in accordance with RSA 541-A:30, III the certificate holder shall immediately transfer all current residents and cease operating.

He-M 1002.17 Appeals.

(a) A request for appeal shall be submitted in writing to the manager of the office of operations support within 10 days following the date of the notification of denial or revocation of certification.

(b) The manager of the office of operations support shall immediately forward the request to the administrative appeals unit so that an appeal hearing can be scheduled.

(c) Appeals shall be conducted in accordance with He-C 200.

He-M 1002.18 Waivers.

(a) An applicant for certification, provider, residence administrator, CMHP, provider agency or consumer may request a waiver of specific procedures outlined in this chapter, in writing, from the department.

(b) A request for waiver shall include:

- (1) A specific reference to the section of the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary;
- (3) A full explanation of alternative provisions or procedures proposed by the agency or consumer; and
- (4) If the residence is certified, the date of certification.
- (5) A signature of the consumer(s) or legal guardian(s) indicating agreement with the request; and

- (6) A signature of the CMHP's executive director or designee signifying his or her recommendation for approval of the waiver.
- (c) No provision or procedure prescribed by statute shall be waived.
- (d) A request for waiver shall be granted after the commissioner determines that the alternative proposed by the community residence meets the objective or intent of the rule, and:
 - (1) Does not negatively impact the health or safety of the client(s); or
 - (2) Does not affect the quality of services to consumers.
- (e) The commissioner shall make a determination on the request for a waiver within 30 days of the receipt of the request.
- (f) Upon receipt of approval of a waiver request, the agency's or consumer's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.
- (g) Waivers shall be granted in writing for a specific duration not to exceed 5 years except as in (h) below.
- (h) Those waivers which relate to the following shall be effective for the current certification period only:
 - (1) Fire safety; or
 - (2) Other issues relative to client health, safety or welfare that require periodic reassessment.
- (i) All waivers shall end with the closure of a community residence.
- (j) A provider agency, CMHP, or consumer may request a renewal of a waiver from the department. Such request shall be made at least 90 days prior to the expiration of a current waiver.

Adopt He-M 1002.19 to read as follows:

He-M 1002.19 Required Forms.

- (a) Applicants or community residences applying for an initial or renewal certification shall complete and submit the form entitled "Request for Certification of Community Residence and/or Individual Day Provider" (1/1/09 edition).
- (b) Applicants applying for emergency certification shall:
 - (1) Complete and submit the form entitled "Emergency Certification for Community Residences- 3 or Fewer Beds" (7/1/02 edition); and
 - (2) Include a signature from the provider agency representative and the executive director of the responsible CMHP that verifies that the appropriate staff determined that the home meets the requirements of He-M 1002, and He-M 1202, as applicable.

(c) Forms completed in accordance with (a) or (b) above shall be submitted to:

Department of Health and Human Services
 Office of Operations Support
 Health Facilities Administration
 129 Pleasant Street
 Concord NH 03301

Appendix

<u>Rule Number</u>	<u>Statute</u>
He-M 1002.01 - 1002.19	RSA 126-A:19, 20